

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROBERT KWIATKOWSKI
Plaintiff,

v.

CITY OF PATERSON,
Defendants.

Civil Action No. 11-03218 (JLL) (JAD)

**REPORT AND
RECOMMENDATION**

JOSEPH A. DICKSON, U.S.M.J.

This matter comes before the Court on its sua sponte order requiring Plaintiff Robert Kwiatkowski to show cause why the Court should not dismiss this action with prejudice for failure to prosecute. ~~After having considered the parties' submission,~~ and for good cause shown; and

WHEREAS, Plaintiff Robert Kwiatkowski commenced this action by filing a Complaint in the Superior Court of New Jersey, Law Division, Passaic County on or about February 25, 2011, (Compl., ECF No. 1-1); and

WHEREAS, on or about June 01, 2011, (Notice of Removal, ECF No. 1), Defendants removed this action from the Superior Court of New Jersey, Passaic County to this Court; and

WHEREAS, on or about July 15, 2011, (ECF No. 2), Defendants filed an Answer to the Complaint; and

WHEREAS, the Court scheduled an in-person settlement conference for July 17, 2014 ("the July 17th settlement conference") (Text Order, May 21, 2014); and

WHEREAS, Plaintiff did not appear to participate in the July 17th settlement conference; and

WHEREAS, the Court directed Plaintiff to contact the Court immediately to advise as to the status of the case (Text Order, July 23, 2014); and

WHEREAS, Plaintiff did not contact the Court to as directed in the July 23, 2014 Text Order; and

WHEREAS, by Text Order dated August 27, 2014, (ECF No. 63), the Court scheduled an in-person status conference for September 15, 2014 ("the September 15th in-person status conference"); and

WHEREAS, Plaintiff did not appear to participate in the September 15th in-person status conference; and

WHEREAS, the Court scheduled a Show Cause Hearing for October 16, 2014 (Order to Show Cause, ECF No. 65); and

WHEREAS, did not appear for the Show Cause Hearing scheduled for October 16, 2014; and

WHEREAS, L.Civ.R 41.1(a) authorizes this Court, on its own initiative, to dismiss an action that has been pending in the Court for more than 120 days without any proceedings having been taken for a lack of prosecution. See L.Civ.R. 41.1(a); and

WHEREAS, Fed R. Civ. P. 41(b) permits a Court to dismiss, sua sponte, a Complaint for failure to prosecute. See Parks v. Ingersoll-Rand Co., 380 F. App'x 190, 195-96 (3d Cir. 2010)(noting the Supreme Court held that Fed. R. Civ. P. 41(b) allows for sua sponte dismissals in the context of a failure to prosecute); and

WHEREAS, a District Court may dismiss a case for failure to prosecute under Rule 41(b) where a balance of the following factors weighs in favor of dismissal: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling

orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions, and (6) the meritoriousness of the claim or defense. See Poulis v. State Farm Fire & Cas.Co., 747 F.2d 863, 868 (3d Cir. 1984); and

WHEREAS, the Court finds that Plaintiff, by failing to (a) prosecute the action for more than 120 days; and (b) appear for the settlement conference scheduled for July 17, 2014; and (c) appear for the in-person status conference scheduled for September 15, 2014; and (d) appear for the Show Cause Hearing scheduled for October 16, 2014, has (1) demonstrated personal responsibility for the delay (he is proceeding pro se); (2) been consistently dilatory; (3) prejudiced Defendants by repeatedly delaying this action; (4) has shown willful conduct with respect to her failure to comply with Court orders;

WHEREAS, given Plaintiff's history of violating Court orders, the Court concludes that a sanction other than dismissal would simply engender more delay and would ultimately prove to be ineffective.

IT IS on this 17 day of October, 2014,

RECOMMENDED that Plaintiffs' complaint be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b) and L.Civ.R. 41.1(a).



JOSEPH A. DICKSON, U.S.M.J.

cc: Hon. Jose L. Linares, U.S.D.J.